

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS  
MINUTES**

May 11, 2010

10:00 a.m. – 2:00 p.m.

State Courts Building, Room 119 A/B  
1501 W. Washington St., Phoenix, AZ 85007

**MEMBERS PRESENT**

Allison Bones  
Dr. Kathy S. Deasy (telephonic)  
Joan Fox, DDS  
V. Michele Gamez, Esq.  
Professor Zelda Harris  
Bridget Humphrey, Esq. (telephonic)  
Honorable Joseph P. Knoblock  
Honorable Dennis Lusk  
Patricia Madsen, Esq.  
Leah Meyers, GOCYF/DFW  
Honorable Wendy Million  
Chief Jerald Monahan  
Honorable Cathleen Brown Nichols  
(telephonic)  
Doug Pilcher  
Marla Randall  
Honorable Emmet Ronan  
Honorable Kristi Youtsey Ruiz  
Andrea K. Sierra  
Renaë Tenney

Honorable Lynda J. Howell  
Honorable Daniel G. Martin  
Commander Scott Mascher  
Heidi Muelhaupt  
Tracey Wilkinson

**STAFF**

Kay Radwanski  
Lorraine Nevarez

**GUESTS**

Honorable Elizabeth Finn, Glendale City  
Court  
Leslee Garner, AOC  
William Hart, ASU  
Lucia Howard, Avon Program  
Kim Sterling-Heflin, Avon Program  
Jerry Landau, AOC  
Stephanie Mayer, AzCADV  
Carol Mitchell, AOC  
John Raeder III, GOCYF

**MEMBERS ABSENT**

Joi Davenport  
Gloria Full  
Laura Horsley

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**I. CALL TO ORDER**

**A. Welcome and Opening Remarks**

Honorable Emmet Ronan, chair, called the May 11, 2010, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to order at 10:10 a.m. Judge Ronan welcomed the members.

**B. Approval of Minutes from February 9, 2010**

Minutes of the February 9, 2010, CIDVC meeting were presented for approval.

**MOTION: Motion was made and seconded to approve the February 9, 2010, meeting minutes. Motion passed unanimously.**

## **II. Legislative Report**

Jerry Landau, AOC government affairs director, provided an update of legislative proposals of interest to CIDVC that were part of the recent legislative session. They are as follows:

### **SB1055; Victims' rights; disclosure of information (Sen. Paton)**

<http://www.azleg.gov/legtext/49leg/2r/bills/sb1055s.pdf>

Includes the court in the list of entities to which a crime victim's information may be disclosed by an advocate providing services to the victim if consent by the victim and in the furtherance of any victim's right.

Title affected: 13

S1055: VICTIMS RIGHTS; DISCLOSURE OF INFO

4/26 signed by governor. Chap. 233, Laws 2010

### **SB1189; Admissibility of opinion testimony (Sen. Leff)**

<http://www.azleg.gov/legtext/49leg/2r/bills/sb1189h.pdf>

Requires that in a civil and criminal action, expert testimony regarding scientific, technical or other specialized knowledge may only be offered by a qualified witness. In order for the testimony to be admissible, the witness must be qualified as an expert on the subject matter based on knowledge, skill, experience, training or education. Requires that the opinion be based on facts, are the product reliable principles that the witness reliably applies to the case, and will assist the Trier of fact in understanding the case. In order to determine whether the testimony provided by a qualified witness is admissible, the court may consider the following factors: whether the expert opinion and its basis can be tested and have subjected to peer reviewed publication, the rate of error of error of the expert opinion and its basis and the degree to which the opinion and its basis are accepted in the scientific opinion and its basis and the degree to which the opinion and its basis are accepted in the scientific community. In essence legislatively applies *Daubert* to Arizona, though not exactly identical to the case.

Title affected: 12

S1189: ADMISSIBILITY OF OPINION TESTIMONY

4/28 5/10 signed by governor chapter number awaited

### **SB1266 Sexting; domestic violence, protection orders (Sen. Paton)**

<http://www.azleg.gov/legtext/49leg/2r/bills/sb1266h.pdf>

It establishes a new offense, Unlawful use of an electronic communication device by a minor. The offense is classified as either a Petty Offense or Class 3 misdemeanor (depending on whether one or multiple images are transmitted) for a juvenile to either intentionally or knowingly use an electronic communication device to transmit a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication device. It is not a violation of the latter provision if the juvenile did not solicit the visual depiction, the juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement officer, and the juvenile did not provide the visual depiction to another person.

A second offense is a Class 2 misdemeanor. For the purposes of this provision a prior diversion counts as an offense.

"Electronic Communication Device" has the same meaning as in 13-3560, "Explicit Sexual

Material” means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in 13-3501, and “Visual Depiction” has the same meaning as in 13-3551.

This allows the court to grant a petitioner of an order of protection the exclusive care, custody or control of any animal that is owned, possessed, leased, kept or held by the petitioner, the respondent or a minor child residing in the residence or household of the petitioner. Allows the court to order the respondent stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, and committing an act of cruelty or neglect in violation of statute of otherwise disposing of the animal.

It eliminates the requirement that the court provide a written notice to a defendant who is found guilty of a first domestic violence offence. Adds the following offences to the definition of domestic violence:

- First and second degree murder
- Negligent homicide
- Manslaughter
- Sexual assault
- Intentionally or knowingly subjecting an animal in the person’s care or control to cruel neglect, cruel mistreatment or abandonment that results in serious physical injury to the animal
- Intentionally or knowingly preventing or interfering with the use of a telephone by another person in an emergency to the definition

Title affected: 8, 13

SB1266 SEXTING; DOMESTIC VIOLENCE; PROTECTION ORDERS 4/29 signed by governor, Chap. No. awaited.

Staff reported that the Forms and Process workgroup will meet to make recommendations on the language to update the protective order forms.

Committee member Allison Bones pointed out that the SB1266 also includes the strangulation and suffocation provisions that increase the penalty for this offense to a class 4 felony.

### **SB1308; Schools; dating abuse and violence (Sen. L. Gray)**

<http://www.azleg.gov/legtext/49leg/2r/bills/sb1308h.pdf>

A school district governing board may prescribe and enforce policies and procedures to address incidents of dating abuse involving students at school that may be based on a model dating abuse policy.

A school district that provides instruction in grades seven through twelve may incorporate dating abuse information that is age-appropriate into the schools districts existing health curriculum that includes the following components:

- Definition of dating abuse
- The recognition of dating abuse warning signs
- The characteristics of healthy relationships

The parent or guardian of a pupil who is under 18 years of age is permitted to review the dating abuse information instructional materials within a reasonable time after submitting a written request.

Defines “dating abuse” as a pattern of behavior in which one person uses or threatens to use physical, sexual, verbal, or emotional abuse to control the person’s dating partner.

Defines “dating partner” as any person who is involved in an intimate association with another person that is primarily characterized by the expectation of affectionate involvement and that includes

casual, serious and long-term dating partners.

Title affected: 13

S1308 SCHOOLS; DATING ABUSE AND VIOLENCE

Ready for governor

### **III. Avon Program for Women and Justice/A Project of Friends of the O'Connor House**

Lucia Howard and Kim Sterling-Heflin, co-chairs, Avon Program, presented on how the program evolved through the efforts of retired Justice Sandra Day O'Connor and the O'Connor House. The Avon program in 2009 received a \$250,000 five-year grant to tackle the critical and growing problem of domestic violence.

In order to develop effective solutions, the co-chairs have met with stakeholders such as law enforcement officers, lawyers, judges, court personnel, elected officials, academics, survivors and community activists to formulate projects that will (1) leverage the Avon grant to provide the greatest benefit to the most victims now and in the future (2) use Justice O'Connor's commitment and credibility to elevate the priority of domestic violence within the justice system and the community; (3) leverage existing resources and assets by forming meaningful partnerships and collaborations, and (4) produce outcomes that are achievable, sustainable and quantifiable.

After reviewing numerous reports, assessing existing resources, opportunities and the unique ability of the O'Connor House to reach high-level decision makers, the following projects were formulated and are currently being organized and executed: (1) partnership with Sandra O'Connor College of Law at ASU to provide victim advocates and legal services, (2) improvement of the protective orders process, (3) education and public awareness (4) attorney general collaboration, and (5) DV grants.

The co-chairs reported that ongoing work continues in domestic violence and it is necessary for collaborations and partnerships to leverage all resources. Avon has partnered with Arizona State University (ASU) Law School to develop a law clinic that will comprise all disciplines to take a more holistic approach. Also, the Avon Program Advisory Committee has obtained funding for at least a two-year, fulltime position for a director of the Avon Program on Women and Justice at the O'Connor House. Applications are now being accepted.

### **IV. Forum 411: Domestic Violence in Arizona: Old Problems, New Possibilities**

William Hart, Morrison Institute, presented on the *Forum 411: Domestic Violence in Arizona-Old Problems, New Possibilities* report. The report provides a brief history of the domestic violence movement and then looks toward the future. Arizona opened one of the first domestic violence shelters in 1972. Historical progression began with (1) women demanding change, (2) lawmakers beginning to listen, (3) the system beginning to evolve and (4) the contemporary reassessment. Arizona has made a lot of progress over the last 40 years. Arizona has dedicated people and good ideas for tackling domestic violence such as (1) collaboration: O'Connor House domestic violence project, (2) justice: specialty domestic violence courts, (3) prevention: purple ribbon council, (4) reflection: Arizona's domestic violence fatality review teams, (5) legislation: Arizona Coalition Against Domestic Violence, and (6) law enforcement: Phoenix Police Department. Domestic violence cases continue to pose challenges because of their complexity; however, in order to work toward new possibilities, experts should continue to focus on education and training, promoting publicity in reference to education and collaboration.

Judge Million asked whether the broadness of the definition of those included domestic violence relationships dilutes the main purpose of domestic violence. She noted that domestic violence refers to intimate partner violence, yet college roommates and siblings are included in the scope of domestic violence relationships.

Allie Bones, executive director of the Arizona Coalition Against Domestic Violence (AzCADV), responded that law enforcement needs better tools to help identify cases that deal with controlling relationships and criminal acts between two people who just know each other. Both are crimes but the approach taken by the criminal justice field might be different in each situation. The City of Phoenix is working on a project to develop a card that asks questions about the situation. Narrowing the language in the statute itself to really address this issue might be challenging unless some predominant aggressor language were added to distinguish between long-term battering cases and single-incident situations.

Judge Million questioned the purpose of adding combative family members who are committing crimes to a statute that is supposed to be about intimate partner violence. She noted that the term “relationship” has broadened.

Ms. Bones explained that the Coalition is having discussions with the City of Phoenix, Arizona law enforcement, and the Arizona Peace Officer Standards and Training Board (AZPOST) to determine the tools that Arizona law enforcement can use to assess dangerous and lethal situations. She noted the importance of focusing resources on areas where families and individuals can most benefit.

Judge Finn commented that this is partly a training issue. She said that the definition in A.R.S. § 13-3601 and the relationships it covers may be broad to protect certain classes within the legislature’s definition of domestic violence. She thought it would be helpful to send a request to all other states coalitions to find out how they define relationships and then have a discussion about the information. Ms. Bones said AzCADV could survey other states to collect that information.

## **V. 2009 Arizona Domestic Violence Fatality Report**

Stephanie Mayer, AzCADV, presented on the statistical findings regarding domestic violence-related deaths in Arizona in 2009. She reported the following findings:

- A decrease in domestic violence related fatalities from 2008
- The highest age range of the deceased was the 26-35 age group
- 50% of male deaths were from suicides
- 68% of females have died in domestic violence related incidents
- 43 total fatalities from homicides and suicides
- 1/3 of fatalities came from estrangements
- 63 fatalities came from firearms and domestic violence
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From her findings, Ms. Mayer recommended more funding, continuing fatality review teams, increased community awareness and education, and seizure of weapons as ways to reduce domestic violence homicides.

## VI. Interpreters and the Courts

Allie Bones, AzCADV, presented an issue regarding interpreter services not being readily accessible at the courts. The Coalition has received complaints that interpreter services are not being offered at the courts particularly during protective order hearings. Ms. Bones provided a resource guide handout for advocates and attorneys on interpreter services for domestic violence victims. She explained that any organizations receiving federal financial assistance under Title VI are required to develop and implement policies that ensure meaningful access for limited English proficient persons in their programs and activities.

Carol Mitchell, AOC court specialist, explained that some of the statewide issues deal with courts having limited resources. Efforts to assist have been made, including development of a list serve that court interpreters use to locate interpreters for specifically requested languages. Also, the New Judges Orientation program includes an educational component regarding court interpreters. Doug Plicher said that the Phoenix Municipal Court spends \$1 million per year on interpreter services. Professor Harris noted that the University of Arizona has a certification program for interpreters.

## VII. Workgroup Reports

- A. *ARPOP* (Judge Finn, chair) – Judge Finn discussed R-10-0017, a rule change petition she filed regarding transfers of protective order cases where the “other protected persons” (children) are the subject of a custody or parenting time order but also included on a protection order. Judge Finn has agreed to withdrawal her petition so a workgroup can have further discussion on the proposal.

The AOC created another workgroup to address this issue. Workgroup members include:

<b>Superior Court Judges</b>	Colleen McNally	Maricopa County
	David Ostapuk	Pima County
	David Mackey	Yavapai County
	Andrew Gould	Yuma County
<b>Limited Jurisdiction Court Judges</b>	Elizabeth Finn	Glendale City Court (Maricopa)
	Gerald Williams	North Valley Justice Court (Maricopa)
	Wendy Million	Tucson City Court (Pima)
	Joseph Knoblock	Benson Justice Court (Cochise)
<b>Clerks of Court</b>	Kristy Ruiz	Pinal County
	Karen Duffy (for Patricia Noland)	Pima County
	Kathy Whittiker (for Michael Jeanes)	Maricopa County

The workgroup also reviewed three other rule change petitions. Comments were prepared in response to rule change petitions R-09-0045, R-10-0013, and R-10-0014. The workgroup asked CIDVC to approve the draft comments so they can be filed before May 20, 2010.

**MOTION: Motion was made and seconded to approve comment to petition R-09-0045, as written. Motion passed with one opposed.**

**MOTION: Motion was made and seconded to approve comment to petition R-10-0013 with exception of staff to review for consistency with the rules or Judicial Code of Conduct. Motion passed unanimously.**

**MOTION: Motion was made and seconded to approve comment to petition R-10-0014 as written. Motion passed unanimously.**

- B. *CPOR Policy* (no designated chair) – Judge Finn, reporting for Doug Plicher, explained that the Phoenix Domestic Violence Fatality Review Team would like to enhance its investigations by accessing the AOC’s Court Protective Order Repository (CPOR). Phoenix Municipal Court has received access in the past, and Glendale currently has access to CPOR through a written agreement with the AOC. CPOR contains information on served and unserved protection orders. Mr. Plicher proposed that one DVFRT member have access and would look up data on cases only where the defendant’s avenues for appeal had run or the defendant was deceased.

**MOTION: Motion was made and seconded to approve access to Phoenix Municipal Court to CPOR to assist its DV fatality review team. Motion passed unanimously.**

- C. *Best Practices* (Hon. Wendy Million) – Judge Million reported that the workgroup’s Best Practices report was well received by the Arizona Judicial Council (AJC). The Morrison Institute also acknowledged the report in its on-line newsletter. Judge Million will try to have the report placed on the Wendell website for judges. The workgroup discussed having links on websites maintained by AZPOST, the Arizona Prosecuting Attorneys’ Advisory Council (APAAC), and possibly the law school clinics.

The workgroup would like to disseminate information to judges regarding protective orders involving children. Some protective orders are protecting children only for a limited time. The workgroup would like to refer judges to the ARPOP rules in a statement or email. The information could be framed as a best practices policy statement. The workgroup also discussed sending scenarios out to judges via email regarding different types of DV cases. This would provide judges with information and references to the specific rules that apply to the case. The scenarios would be short and the references concise.

- D. *Education* (Allie Bones, chair) – The workgroup has met with Leslee Garner, AOC education specialist, to assist her in developing computer-based DV training modules for judges and court staff. The workgroup will develop a survey to be disseminated to family court judges to determine the type of training needed regarding domestic violence as it relates to family court. The workgroup also discussed developing a community-based training regarding court

interpreters. The workgroup will begin discussing plans for the next DV summit at its next workgroup meeting.

- E. *Forms and Processes* (Hon. Elizabeth Finn, chair) – The workgroup will be reviewing the forms to consider how to add language to the forms regarding protection of animals. SB1266 contains a provision authorizing the courts to give custody of animals to Order of Protection petitioners.

## **X. Progress Report: Recovery Act STOP Grant Project**

Ms. Garner reported on some of the projects that she is currently working on with the help of the education workgroup. They are as follows:

- Final stages of DV101 for court staff to highlight the rules
- DV101 for Judges
- Top ten questions asked about DV
- Elder abuse and late life domestic violence
- Beginning stages of the DV summit and bench book
- Resource manual

## **XI. Call to the Public**

No public comment.

Committee member Leah Myers introduced John Raeder, program administrator, Governor's Children, Youth and Family. Mr. Raeder will administer Recovery Act Stop grants.

## **XII. Adjournment**

The meeting was adjourned at 2:00 p.m.

### **Next Meeting:**

Tuesday, September 14, 2010

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 119 A/B